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No. 79-6584

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

IN THE MATTER OF SHERYL ANN TRAPP, ET AL.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

MOTION TO AFFIRM

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In December 1972, respondent's predecessor as juvenile officer of Henry County, Missouri, instituted proceedings pursuant to Missouri's child neglect law §§ 211.011 to 211.431 RSMo, to inquire into the continued custody of four infant children, ranging from five years to three months in age, the natural offspring of appellant Linda Mae Trapp and her husband Robert Emery Trapp, then residents of the community of Montrose in Henry County. Based upon a hearing conducted in January of 1973, attended by Mrs. Trapp and her appointed counsel, Juvenile (and Circuit) Judge Kelso Journey ordered transfer of custody of the children to the county unit of the State Division of Family Services.

Missouri law directs that the procedure be formal or informal at the discretion of the judge and that the judge is to inquire into the habits, surroundings, conditions and tendencies of the child in order to promote its best welfare. Only persons with a direct interest may attend the hearing, the affected child's presence or absence is to be determined by the judge, and a recording of the testimony at the hearing will be made only if ordered by the judge or requested by any party. Section 211.171. A record was not made of the January, 1973 hearing.

The following month, Judge Journey entered an order based on § 211.241 directing the Trapps to contribute to the support of three of the children while their custody was elsewhere. The Trapps made numerous attempts in the ensuing years to set aside these orders, included in which were challenges to the constitutionality of the Missouri law, and upon denial of relief in September 1978 by Judge Journey's successor, Judge Harold Kyser, they appealed to the Supreme Court of Missouri. The Supreme Court of Missouri unanimously upheld the constitutionality of the Missouri child neglect law, but three of the seven members dissented from the affirmance of the order of support. *Matter of Trapp*, 593 S.W.2d 193 (Mo. banc 1980). It is this decision which is the object of the instant appeal.

Acting under the termination of parental rights law §§ 211.442 to 211.492, Judge Journey ordered the termination of the parental rights of the Trapps in 1974 but the Missouri Court of Appeals in Kansas City determined this order was unjustified and reversed it. *In re Trapp*, 528 S.W.2d 489 (Mo. App. K. C. 1975). Institution in 1977 of a proceeding to terminate the parental rights of Linda Mae Brault (formerly Trapp) to one or more of the children of her prior marriage is reflected in *State ex rel. Brault* v. *Kyser*, 562 S.W.2d 172 (Mo. App. K. C. 1978).

From 1903 until 1957, the Missouri law providing for the neglected child who could be placed in the custody of other than his parents described as its subject:

> . . . any child under the age of seventeen years, who is destitute or homeless or abandoned, or dependent upon the public for support, or who habitually begs or receives alms, is found living in any house of ill-fame, or with any vicious or disreputable person, or who is suffering from the cruelty or depravity of its parents, or other person in whose care it may be; and any child who while under the age of ten years is found peddling or selling any articles or singing or playing any musical instrument for gain upon the street or giving any public entertainments or accompanies, or used in any aid of any person so doing." § 211.010-2 RSMo 1949.

In 1957 the essence of the present child neglect law was enacted and it included these provisions:

> "The purpose of this chapter is to facilitate the care, protection and discipline of children who come with the jurisdiction of the juvenile court. This chapter shall be liberally construed, therefore, to the end that each child coming within the jurisdiction of the juvenile court shall receive such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the state and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should have been given him by them." § 211.011
>
> " 'Legal custody' means the right to the care, custody and control of a child and the duty to pro-

vide food, clothing, shelter, ordinary medical care, education, treatment and discipline of a child. Legal custody may be taken from a parent only by court action and if the legal custody is taken from a parent without termination of parental rights, the parent's duty to provide support continues even though the person having legal custody may provide the necessities of daily living." § 211.021 (4) "... [T]he juvenile court shall have exclusive original jurisdiction in proceedings:

(1) Involving any child ... who is alleged to be in need of care and treatment because:

(a) The parents ... neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his well-being; ... or

(b) The child is otherwise without proper care, custody or support; or

(c) The behavior, environment or associations of the child are injurious to his welfare or to the welfare of others; ...." § 211.031

"Whenever any person informs the court in person and in writing that a child appears to be within the purview ... of section 211.031, the court shall make or cause to be made a preliminary inquiry to determine the facts and to determine whether or not the interests of the public or of the child require that further action be taken. On the basis of this inquiry the juvenile court may make such informal adjustment as is practicable without a petition or may authorize the filing of a petition by the juvenile officer." § 211.081

"2. The petition shall set forth plainly:

(1) The facts which bring the child within the jurisdiction of the court;

(2) The full name, birth date, and residence of the child;

(3) The names and residence of his parents, if living; . . .

(5) Any other pertinent data or information. . . ." § 211.091

"When a child is found by the court to come within the applicable provisions of section 211.031, the court shall so decree and make a finding of fact upon which it exercises its jurisdiction over the child and the court may, by order duly entered, proceed as follows:

(1) Place the child under supervision in his own home or in custody of a relative or other suitable person upon such conditions as the court may require;

(2) Commit the child to the custody of:

(a) A public agency or institution authorized by law to care for children or to place them in family homes;

(b) Any other institution or agency which is authorized or licensed by law to care for children or to place them in family homes; . . . or

(3) Place the child in a family home;

(4) Cause the child to be examined and treated by a physician, . . . and when the health or condition of the child requires it, cause the child to be placed in a public or private hospital, clinic or institution for treatment and care, ..." § 211.181

> "When the juvenile court finds a child to be within the purview of applicable provisions of section 211.031 it may in the same or subsequent proceedings, either on its own motion or upon the application of any person, institution or agency having the custody of such child, proceed to inquire into the ability of the parent of the child to support it or to contribute to its support. . . ." § 211.241
>
> "1. A decree of the juvenile court made under the provisions of section 211.181 may be modified at any time on the court's own motion.
>
> 2. The parent, guardian, legal, custodian, spouse, relative or next friend of a child committed to the custody of an institution or agency may, at any time, petition the court for a modification of the order of custody. The court may deny the petition without hearing or may, in its discretion, conduct a hearing upon the issues raised and may make any orders relative to the issues as it deems proper." . . . § 211.251

Not long after this law went into effect, the state Court of Appeals in St. Louis considered a due process challenge that it was vague, indefinite and uncertain and hence not a proper basis for taking the custody of three minor children from their mother. *Minor Children of F. B.* v. *Caruthers,* 323 S.W.2d 397 (Mo. App. St. L. 1959). In rejecting the challenge, the court observed:

> ". . . The statute deals with children in need of care that they are not receiving and this may arise in so many ways that it would be impossible to state them all with great exactitude. . . .
>
> It is of course true that while the court is

> grant wide judicial discretion by the act, that discretion must be exercised, . . . with great regard for the rights of all parties concerned. That includes the natural right of the parent to the custody of his child. . . . Any restriction of the parental right must be cautiously imposed and such restriction should never be greater than that which is necessary to promote the welfare of the child. . . ." 323 S.W.2d at 401.

The various appellate courts of Missouri have subsequently and with some frequency applied judicial gloss to the 1957 legislation. In so doing their attitude in general seems to be characterized by a concern for the preservation of the natural parent-child relationship and custodianship. Excerpts from some of these opinions are as follows:

In re M____ P____ S____, 342 S.W.2d 277 (Mo.App. St. L. 1961):

> ". . . [A] mother is not to be deprived of the care, companionship and responsibility of her child except for grave reasons and such as are authorized by legislative enactment; that she is presumed to be qualified for the natural privilege of the primary right to custody; and that whosoever seeks to deny a mother that privilege carries the burden of proof." 342 S.W.2d at 279.

In Re I. M. J., 428 S.W.2d 18 (Mo. App. Spr. 1968):

> ". . . It is not the purpose of statutory neglect proceedings to find substitute or foster parents for children; the State has an interest in the integrity of the family, and in such proceedings parental rights should be limited only 'to the extent necessary to achieve the most desirable goal, wherever possible, of reinstating the natural and nor-

mal parent and child relationship.' . . . " 428 S.W.2d at 22.

In Re C____ F____ B____, 497 S.W.2d 831 (Mo. App. K. C. 1973):

". . . [T]he central issue of this case. . . [is] . . . whether the parents were guilty of 'neglect' so as to give the Juvenile Court jurisdiction under § 211.031. This statutory prerequisite to jurisdiction is not a term having a fixed and rigid meaning. . . . 'Neglect, as a concept, permits of no certainity, and protection from vagueness must be found in the wisdom of judges rather than the detail of statute.' . . ." 497 S.W.2d at 834

"The difficulty of applying these general rules in specific cases lies in reconciling the needs of the child with the rights and privileges of parents and of both with the interest of the state in safeguarding children upon whom its entire future depends. The perplexities of arriving at a fair balance of these sometimes conflicting factors has . . . the court being called upon not only to interpret the statutory language but also to give its 'estimate of the human situation.' . . . ." 497 S.W.2d at 835.

"The ultimate question in this case comes down to whether state employed professionals shall be permitted to substitute their judgment for that of the parents. No sanction for that type of substitution is granted by the law, unless there is neglect on the part of the parents. No neglect is shown on the facts of this case. 'Neglect' for this purpose must be understood as a failure by the parents to supply the minimum quality of care which the community will tolerate. . . . " 497 S.W. 2d at 837.

In Re Ayres, 513 S.W.2d 731 (Mo. App. St. L. 1974):

> ". . . Yet, at all times she evidenced a continuing maternal concern and interest in her daughter. Besides there is not evidence that the mother at any time abandoned Bonnie. Abandonment must be wilful or a course of conduct which impliedly shows a conscious disregard or indifference to the child in respect to one's maternal obligations owed to the child . . . ." 513 S.W.2d at 735.

In Interest of Dimmitt, 560 S.W.2d 368 (Mo. App. K. C. 1977):

> "Section 211.031(1)(a). . . legislatively recognizes the power of the state, acting by and through the Juvenile Division of the Circuit Court in the capacity of parens patriae, to assume direction, control and custody of minor children when certain carefully prescribed conditions are found to exist. However, it is not within the province of the juvenile courts to determine generally what conditions or exigencies warrant their intervention between parent and child. Establishing the nature and limit of the conditions and exigencies which warrant judicial intervention is a legislative prerogative as reflected by the firmly accepted principle that 'juvenile courts are courts of limited jurisdiction and may exercise only such powers as are conferred by statute.' . . . .
>
> The legislature has responsibly exercised its prerogative by wisely refraining from vesting juvenile courts with broad, unlimited authority to intervene between parent and child. In doing so it has evinced awareness of a misty but irrefutable truth—immeasurable intangible values are attached to the relationship between children and

their natural parents which cannot be supplied by others regardless of how exemplary their intentions may be . . . . The right of natural parents to have custody of their minor children, unless their welfare is manifestly jeopardized by reason of parental unfitness, is considered inviolate and vigilantly guarded. . . ." 560 S.W.2d at 371.

"An ever increasing trend is abroad to separate natural parents and their children for every imaginable reason. Its continued indulgence seriously jeopardizes the unique role of the family as the principal bastion of security for children. . . . In raw core terminology, neglect statutes were never intended to surreptitiously destroy the natural custodial rights of parents of factually unneglected children. Placing minor children in an artificial, tri-structured atmosphere consisting of child, foster parent and social worker should never be abstractly viewed as a priority solution." 560 S.W.2d at 372-373.

In re Marriage of Wofford, 589 S.W.2d 323 (Mo.App. S.D. 1979):

". . . A minor child should not be placed in the custody of a third person except as a necessary expedient, usually temporarily, until one of the parents becomes physically and economically capable of having custody, and permanent placement with a third person is done only when both parents are unfit to have custody. . . ." 589 S.W. 2d at 326.

"The care and affection which a parent normally exhibits for a child is not to be taken lightly. There is no evidence in the transcript that either party was morally unfit or any indication

> that either had anything but love and affection for the children. By giving deference to the trial court, we believe there was sufficient evidence to place the children with the Division of Family Service temporarily, until one or the other parent could make satisfactory arrangements for caring for the children. Considerable time has passed since the trial, and we do not know what the present circumstances may be. We believe it would be in the best interests of the children to remand the case for further evidence, to determine who should have custody as it may be shown at the time. . . .''* 589 S.W.2d at 326.

The 1959 decision of the St. Louis Court of Appeals in *Minor children of F. B.* v. *Caruthers*, 323 S.W.2d 397 was ratified and considerably relied upon in the present case by the Supreme Court of Missouri in rejecting appellant's challenge that the Missouri child neglect law is unconstitutionally vague. 593 S.W.2d at 203. In this regard, the Missouri court also relied upon decisions of the Supreme Courts of Nebraska, South Dakota, Vermont and a court of appeals in Illinois. The latter decision, *People* v. *Schoos*, 305 N.E.2d 560 (Ill. App. 1973) (app. dis. for want of sub. Fed. quest., 417 U.S. 963 (1974)), dealt with the Illinois child neglect statute, quite similar to that of Missouri's, which identified a negelected child as one:

> ''. . . negelected as to proper or necesary support, education as required by law, or as to medical . . . or other care necessary for his well-being . . . or . . . whose environment is injurious to his welfare or whose behavior is injurious to his own welfare or that of others.'' Ill. Rev. State. Ch. 37, § 702-4.

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*A like disposition has occurred in the present case. 593 S.W.2d at 206.

In its opinion, the Illinois court said:

> "Child neglect is by its very nature incapable of a precise and detailed definition and . . . the child neglect statute does not infringe upon any of the basic liberties protected by the United States Constitution. The United States Supreme Court has never held a parent has the right to treat his child as he wishes subject only to limited and strictly defined state intervention. . . . . Consequently, the statute need not meet the higher standard of specificity than is ordinarily applied.
>
> The state does have a compelling interest to protect children from abuse and neglect, and to narrow the statute would have the effect of diminishing the rights of children who have no other means of protecting themselves . . . ." 305 N.E.2d at 562.

The Nebraska decision relied upon by the Missouri Supreme Court was *In re Interest of Metteer*, 279 N.W.2d 374 (Neb. 1979), wherein the court stated on the vagueness issue:

> "The argument of the appellant, carried to its logical extreme, would require that in order for a statute to meet constitutional standards it must contain a precise checklist of parental responsibilities as well as a list of prohibitions. Society does not operate in a historical, social, or moral vacuum. The term used in the statute, while broad, must be interpreted in the light of our history, culture, generally accepted standards of morality, and the common understanding of the behavior of reasonably conscience and well-intentioned parents." 279 N.W.2d at 377-378.

Although technically distinguished from the present case because it involved the Oregon law on termination of parental rights rather than a law authorizing temporary deprivation of custody due to a parent neglecting its child, the Supreme Court of Oregon in *State* v. *McMaster*, 486 P2d 567 (Or. 1971) expressed the following philosophy as to the required degree of legislative guidance in this area:

> ". . . While the juvenile code is administered by courts, the code directs the juvenile courts to act in some manners similar to a social administrative agency. Much of the code and much of the juvenile courts budget is devoted to the proper disposition of the child after the child comes within the court's jurisdiction. To adequately perform this function the legislature reasonably deemed it necessary to give the juvenile court greater flexibility than may be thought desirable for a court functioning in its criminal role." 486 P.2d at 569-570.
>
> "In our opinion, to accomplish its primary purpose of caring for the welfare of the child, the legislature would have extreme difficulty being more specific. The legislature could specify certain conduct upon the part of the parents which would cause them to be deprived of their parental rights; however, that is not the intent of the legislature or of this court in interpreting this statute. The legislature and this court do not desire to sever parental rights for any conduct by the parents unless such conduct seriously affects the child's welfare . . . . . " 486 P.2d at 570.
>
> ". . . We would hope that in the case of the McMasters, or any parents, there is no need for an explicit statute to 'spell out' how poorly they can treat their child before risking loss of their parental rights.

> If some notice of conduct which will cause a result is required in a noncriminal statute, the parental rights statute gives adequate notice of the kind of conduct involved and the result which will occur. The conduct is of a kind detrimental to the child, not beneficial. It is not just any detrimental conduct but seriously detrimental conduct. We see no policy to be furthered by attempting to elaborate on what conduct is seriously detrimental and what is not. The ordinary parent should 'get the message' from the statute as it is now worded." 486 P.2d at 571.

An attitude of the Maryland Court of Appeals on the subject of precision in child welfare legislation was expressed in *Bowers* v. *State*, 389 A.2d 341 (Md. 1978) as follows:

> ". . . But in drafting a statute intended to deal with the problem as complex as child abuse, the Legislature is not required to spell out the prohibited acts in elaborate detail. To do so would likely be counterproductive. In our opinion, the definition of abuse challenged in the case at hand represents a most suitable compromise between the constitutionally mandated requirements of specificity and the practical need to devise language flexible enough to combat a social evil of truly inestimable portions. . . . " 389 A.2d at 350.

The Pennsylvania statute on termination of parental rights was held to be sufficiently specific in the case of *In re William L.*, 383 A.2d 1228 (Pa. 1978) (cert. den. 439 U.S. 880 (1978); Brennan, White and Marshall would grant cert.) The Pennsylvania statutory standard was:

> "The repeated and continued incapacity abuse, neglect, or refusal of the parent has caused

> the child to be without essential parental care, control, or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent." Pa. Stat. § 311(2).

The Pennsylvania Supreme Court observed:

> "The language of § 311(2) does not admit of an interpretation permitting termination of parental rights based upon personal preferences or speculative concepts of proper child rearing. The needs of the child unmet by the parent must be 'essential' and 'necessary' to his 'physical or mental well-being.' In addition, the evidence must establish that the causes and conditions of the deprivation 'cannot or will not be remedied.' " 383 A.2d at 1234.

The legislative standard in Texas for the termination of the parent-child relationship is:

> "The parent has . . . knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child . . . and . . . termination is in the best interest of the child." § 15-02(1) (D) (2), Texas Family Code.

This standard was held not to be impermissibly vague in *Gonzales* v. *Texas Department of Human Resources*, 581 S.W.2d 522, 530-531 (Tex. App. 1979) (cert. den.; No. 79-913, 2-25-80).

The legislative standard in Delaware for termination of parental rights is that "the parent or parents of any such child . . . are not fitted to continue to exercise parental rights; . . . ", 13 Del. C. § 1103(4), which the Supreme Court

of Delaware considered adequately definite and certain *In Matter of Five Minor Children*, 407 A.2d 199 (Del. 1979) (prob. juris. noted, No. 79-5932; 3-24-80). The Delaware court observed:

> ". . . Indeed, it is difficult to conceive a statute which could particularize a spectrum of optional circumstances that could cover parental unfitness. But we have no doubt that a statutory authorization to terminate parental rights on such ground serves a legitimate social end and should be legislatively permissible." 407 A.2d at 199.

Appellant in the instant case understandably places great reliance upon two lower federal court decisions on the subject of definite and certain child welfare legislation. *Alsager* v. *District Court of Polk County*, 406 F.Supp. 10 (S.D. Ia. 1975); aff'd, 545 F.2d 1137 (8th Cir. 1976) and *Roe* v. *Conn*, 417 F.Supp. 769 (M. D. Ala. 1976). In the former case the following Iowa statute was under consideration:

> ". . . The parents have substantially and continuously, or repeatedly refused to give the child the necessary parental care and protection. . . .
>
> Although financially able, the parents have substantially and continuously neglected to provide the child with necessary subsistance, education or other care necessary for physical or mental care or morals of the child or have neglected to pay for subsistance, education or other care of the child when legal custody is lodged with others. . . .
>
> . . . . The parents are unfit by reason . . . of other conduct found by the court likely to be detrimental to the physical or mental health or morals of the child.

> . . . Following an adjudication of neglect or dependency, reasonable efforts under the direction of the court have failed to correct the conditions leading to the termination." Code of Iowa § 232.41 (1965).

The federal District Court ruled that this statute was vauge on its face, 406 F.Supp. at 21, and the Court of Appeals affirmed on other grounds but recognized the seriousness of the vagueness and overbreadth attacks on the statute, 545 F.2d at 1137. The District Court had apparently found the Iowa law to be overbroad because it inhibited and deterred parents in the full and free exercise of a constitutional right to family integrity. 406 F.Supp. at 19. By extending the doctrine of overbreadth beyond First Amendment freedoms, or placing a constitutional right of family integrity within the First Amendment, this District Court may have plowed new constitutional ground. This idea may also give disproportionate weight to the rights of parents over the welfare of children. The Supreme Judicial Counsel of Massachusetts in *Petition of Department of Public Welfare*, 381 N.E.2d 565 (Mass. 1978) noted:

> "The doctrine of least restrictive alteratives has long served to maximize the expression of protected individual freedoms as against broad governmental encroachment. . . . Our focus of inquiry necessarily changes, however, where, as here, the State acts not simply as an arm of the majority, but on behalf of a helpless individual within its midst. Where the State enters a family situation to protect the interest of the child, the task is not simply to find an accommodation between the rights of the individual parents and the interests of society, . . ." 381 N.E.2d at 573.

And the Supreme Court of Alaska in *D. M.* v. *State*, 515 P.2d 1234 (Alas. 1973) observed:

> ". . . the subjective intent standard often focuses too much attention on the parents wishful thoughts and hopes for the child and too little on the more important element of how well the parents have discharged their parental responsibility. We acknowledge that parental rights are of serious and substantial import. We note, however, that in recent years the courts have become increasingly aware of the rights of children." 515 P.2d at 1237.

This Court in *Prince* v. *Commonwealth of Massachusetts*, 321 U.S. 158 (1944) remarked:

> ". . . The parent's conflict with the state over control of the child in his training is serious enough when only secular matters are concerned. It becomes even more so when an element of religious conviction enters. Against these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens. . . ." 321 U.S. at 165.
>
> ". . . [T]he state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; . . . " 321 U.S. at 167.
>
> "The state's authority over children's activities is broader than over like action of adults. . . . A democratic society rests, for its continuance, upon the healthy well-rounded growth of young

people into full maturity as citizens, with all that implies. It may secure this against impending restraints and dangers within a broad range of selection. . . ." 321 U.S. at 168.

More recently, this Court in *Stanley* v. *Illinois*, 405 U.S. 551 (1972) made these comments:

> "The State's right — indeed, duty — to protect minor children through a judicial determination of their interests in a neglect proceeding is not challenged here. . . ." 405 U.S. at 557.
>
> "For its part the State has made its interest quite plain: Illinois has declared that the aim of the Juvenile Court Act is to protect 'the moral, emotional, mental, and physical welfare of the minor and the best interests of the community' and to 'strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal. . . .' . . . These are legitimate interests, well within the power of the State to implement. We do not question the assertion that neglectful parents may be separated from their children." 405 U.S. at 559.

And, Mr. Justice Douglas stated in dissent in *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972):

> ". . . [W]e have in the past analyzed similar conflicts between parent and the State with little regard for the views of the child . . . Recent cases, however, have clearly held that the children themselves have constitutionally protected interests." 406 U.S. at 243.

The three federal judges who decided *Roe* v. *Conn*, 417

F. Supp. 769 (M.D. Ala. 1976) considered the following legislative standard for neglected children:

> "The words 'neglected child' shall mean any child, who, . . . has no proper parental care or guardianship or whose home, by reason of neglect, cruelty, or depravity, on the part of his parent . . . or other person in whose care he may be, is an unfit and improper place for such child . . . or is under such improper or insufficient guardianship or control as to endanger the morals, health or general welfare of such child . . . or who for any other cause is in need of the care and protection of the state." Ala. Code Title 13, § 350(2).

The federal District Court, in determining this Alabama statute unconstitutional, expressed substantial agreement with the federal District Court in the Iowa case and concluded:

> "In the present case, not only is the statutory definition of neglect circular (a neglected child is any child who has no proper parental care by reason of neglect), but it is couched in terms that have no common meaning . . . When is a home 'unfit' or an 'improper' place for a child? Obviously, this is a question about which men and women of ordinary intelligence would greatly disagree. Their answers would vary in large measure in relation to their differing social, ethical, and religious views. Because these terms are too subjective to denote a sufficient warning to those individuals who might be affected by their proscription, the statute is unconstitutionally vague . . . " 417 F. Supp. at 780.

This federal court in Alabama, and especially that in Iowa, may have imposed the most exacting standard yet for

definity and certainty in parental rights legislation. It is very doubtful that the Missouri child neglect law can meet this standard. However, the decision of the Missouri Supreme Court in this case holding the Missouri law sufficiently definite and certain, 593 S.W.2d at 202-203, appears in conformity with the standard recognized and applied by the state appellate courts of Illinois, Pennsylvania, Texas, Oregon and Delaware (awaiting plenary consideration by this Court) and perhaps the general statements of this Court on the vagueness doctrine:

> " '. . . [B]ut there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest . . . " *United States Civil Service Commission* v. *National Association of Letter Carriers,* 413 U.S. 548, 578-579 (1973).
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> "We recognize that in a noncommercial context behavior as a general rule is not mapped out in advance on the basis of statutory language. In such cases, perhaps the most meaningful aspect of the vagueness doctrine is not actual notice, but the other principle element of the doctrine — the requirement that a legislature establish minimal guidelines to govern law enforcement. . .
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> There are areas of human conduct where, by the nature of the problems presented, the legislature simply cannot establish standards with great precision . . . " *Smith* v. *Goguen,* 415 U.S. 566, 574, 616 (1974).

Respondent requests this Court to summarily affirm the judgment of the Supreme Court of Missouri.

Respectfully submitted,

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